IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

THURSDAY, THE 15TH MARCH 2007 / 24TH PHALGUNA 1928

WP(C).No. 25731 of 2006(L)

PETITIONER:

A.K.MANI, PRESIDENT,
DEVIKULAM TALUK PLANTATIONS WORKERS
CO-OPERATIVE CREDIT SOCIETY LIMITED NO.K.382,
MUNNAR P.O.

BY ADV. SRI.P.RAMAKRISHNAN

RESPONDENTS:

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1. THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL) IDUKKI.

2. THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES, DEVIKULAM TALUK, IDUKKI.

ADDL. R3. M. BALASUBRAMANIAN,
MEMBER NO. 21241,
SOUTH DIVISION,
CHOKANAD ESTATE,
MUNNAR, IDUKKI (DIST).
(ADDL. R3 IMPLEADED AS PER ORDER DATED 28.2.07 IN I.A.NO.2465/07

BY SPL. GOVERNMENT PLEADER(CO-OP) SMT. A.G. ANITHA
SRI.N.K.SUBRAMANIAN
SRI.S.ANANTHAKRISHNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C)NO.25731/06

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF NOTICE DATED 19.09.2006 ISSUED BY THE 1ST RESPONDENT.

EXT.P2: TRUE COPY OF REPLY DATED 27.9.2006 DRAFTED BY THE PETITIONER.

EXT.P3; TRUE COPY OF THE MINUTES OF THE MEETING HELD ON 9.07.06.

EXT.P4: TRUE COPY OF THE LETTER DATED 24.05.06 OF THE ASST. REGISTRAR ADDRESSED TO THE JOINT REGISTRAR (GENERAL) IDUKKI.

RESPONDENTS' EXHIBITS

EXT.R3(A): TRUE COPY OF THE ATTENDANCE OF AGM DATED 12.04.06 WITH TRANSLATION.

EXT.R3(B): TRUE COPY OF PETITION DATED 24.01.07 FILED BEFORE 1ST RESPONDENT.

EXT.R3(C): TRUE COPY OF PETITION DATED 02.02.2007 FILED BEFORE POLICE.

EXT.R3(D): TRUE COPY OF PETITION DATED 28.06.06 FILED BEFORE 1ST RESPONDENT.

EXT.R3(E): TRUE COPY OF PETITION DATED 28.06.06 FILED BEFORE 1ST RESPONDENT.

EXT.R3(F): TRUE COPY OF PETITION DATED 08.04.06 FILED BEFORE 1ST RESPONDENT.

/TRUE COPY/

PA TO JUDGE.

S. SIRI JAGAN, J.

W.P.(C)NO.25731 OF 2006

DATED THIS THE 15th DAY OF MARCH, 2007

JUDGMENT

Over the past two decades, the Co-operative sector in Kerala has been afflicted with the malady of over – politicisation to such an extent that, a tendency is widely experienced whereby the political party which is in power in the State is constantly attempting to wrest control of societies which are administered by rival political parties. It is seen that as soon as a particular political party comes into power in the State polity notices are being issued under the Co-operative Societies Act and Rules for supersession of the Board of management of the Society, so that the ruling party can take control of the administration of the society through an administrator or administrative committee appointed by them. This infact is a malady which tends to affect the progress of the Co-operative movement in this State and also the very democratic fabric of a Co-operative Society. The public are the really aggrieved persons when the political parties fight with each other to wrest power and control of a Society for their political or other gains. This particular case is an example of such a tendency in this State.

2. The petitioner is the President of the Devikulam Taluk

Plantation Workers Co-operative Credit Society registered under the Kerala Co-operative Societies Act. He is challenging Ext.P1 notice issued to him under Section 32(1) of the Kerala Co-operative Societies Act directing the President of the Society to file his explanations as to why proceedings under section 32 should not be taken against the managing committee of the Society for the irregularities enumerated in the notice. Although the petitioner had drafted Ext.P2 reply for filing, apprehending that the same would be a meaningless exercise in so far as Ext.P1 itself would amply prove that the 1st respondent has already taken a decision to supersede the managing committee, he has filed this writ petition challenging Ext.P1 notice, without filing the same, the petitioner contends.

3. Accepting the fact that Ext.P1 is only a notice to show cause, the learned counsel for the petitioner would submit that in so far as from the facts disclosed, it is very evident that the intention of the 1st respondent is to pass orders of supersession, whatever be the reply submitted by the petitioner, he is perfectly justified in invoking the jurisdiction of this Court under Article 226 of the Constitution of India, challenging Ext.P1 notice. He would submit that in Ext.P1 itself, the 1st respondent has stated that he has initiated these proceedings only on the basis of a report obtained by him under Rule 66 of the Kerala Co-operative Societies Rules. The petitioner's contention is that for obtaining a report

under Section 66 of the Co-operative Societies Act, the Rule 66 of the Kerala Co-operative Societies Rules prescribes certain procedure which are mandatory in nature and if that report is obtained without complying with the mandatory provisions contained in Rule 66., that report cannot be the basis of any proceedings under Section 32. Reading out the irregularities narrated in Ext.P1, he would submit that the same itself would prove the malafide nature of the proceedings initiated by Ext.P1. He took each one of the irregularities mentioned therein and tried to convince me that the same have no factual basis. He would further say that the present managing committee which took charge on 29.8.04 is entitled to continue in office till 18.8.09. According to him the Society has no dues to any organisation or the Government. The tentative profit of the Society for the present year is Rs.34,00,000/-. He points out that the alleged irregularities in Ext.P1 themselves would show that they are not irregularities at all, but action taken by a managing committee, which is interested in the welfare of the committee, for the betterment of the Society itself. He particularly points out irregularities 4 and 5 and those mentioned in Ext.P1 which according to him is so flimsy and vague and in fact does not spell out any irregularity on any factual basis.

4. The learned counsel for the petitioner also refers to the decision of this Court in **Dr. Vijayalakshmi Kunjamma Vs. State**

of Kerala and others (1978 KLT 62), in support of his contention that even against a notice, aggrieved person has invoked the jurisdiction of this Court under Article 226 in proper case and according to him this is an eminently fit case for such interference.

5. He particularly refers to the insufficiency of the satisfaction of the 1st respondent against any irregularities committed by the managing committee warranting issuance of Ext.P1 notice. According to him when Ext.P1 itself categorically stated that the satisfaction of the Joint Registrar has been arrived at on the basis of a report under Section 66, unless that report is obtained in accordance with the mandatory provisions prescribed under Rule 66, the very basis of Ext.P1 falls down and therefore Ext.P1 is liable to be interfered with. The contention is that under Rule 66, an order authorizing enquiry under Section 66 should contain 5 details mentioned in Sub rule 1 of Rule 66. Sub rule 2 further mandates that the order authorizing enquiry under Section 66 has to be issued to the President or the Secretary of the Society concerned by registered post with acknowledgment due. The petitioner categorically asserts that no such notice whatsoever has been served on the President or the Secretary of the Society at any time. In the above circumstances, according to the counsel for the petitioner, the 1st respondent could not have legally come to a satisfaction required for initiation of proceedings under Section 32

while issuing Ext.P1 notice and therefore Ext.P1 is unsustainable and liable to be interfered with.

6. In this connection, he refers to the decision in **Ellakkal Service Co-operative Bank Vs. State of Kerala (1997(2) KLT 85)** wherein a single bench of this Court had categorically held that the provisions of Rule 66 is mandatory in nature. He also submits that for invoking provisions of Section 32, the committee of the Society should have been guilty of any of the four irregularities mentioned therein and according to him Ext.P1 notice would not reveal that any of the four irregularities has been committed by the Committee headed by the petitioner. In this connection, the petition also refers to the decision in **Govindan Kutty Vs. Viyyur Service Co-op.bank (1990(1)KLT 513), Rajagopalan Nair Vs. State of Kerala (1995 (2) KLT 184), Sudarsanan Vs. State (1997(1) KLT 957)**. On the above grounds, the learned counsel for the petitioner seeks quashing of Ext.P1 as arbitrary, illegal and unsustainable .

7. A counter affidavit has been filed on behalf of the 1st respondent fully justifying the issuance of Ext.P1 notice. It is submitted therein that the procedure contemplated in Rule 66 has been substantially complied with and therefore Ext.P1 notice issued on the basis of a report obtained under Section 66, fully complying with provisions of Rule 66 is perfectly valid and proper. It is also

submitted that the writ petition is premature, in so far as Ext.P1 is only a show cause notice to which the petitioner can file his reply, which would be considered and then only orders passed. According to the learned Government pleader there is absolutely no basis for apprehension that the reply to be filed by the petitioner would not be considered in the correct perspective. In this respect in support of the contention of the learned Government pleader that no writ petition would lie against a show cause notice, the following decisions are also relied upon, **Executive Engineer Bihar State Housing Board Vs. Ramesh Kumar Singh and others (1996 (1) SCC 327), Chanan Singh Vs. Registrar, Co-op.Societies, Punjab and others (1976 SCC 361), State of U.P. and another Vs. Anil Kumar Ramesh Chandra Glass Works and another (2005 (11) SCC 451).** On these grounds, the learned Government pleader would want me to sustain Ext.P1 and dismiss the writ petition.

8. The learned counsel for the additional 3rd respondent would try to argue that the irregularities mentioned in Ext.P1 have actually been committed by the managing committee headed by the petitioner. He would submit that in respect of the resolution adopted by the general body to raise credit limit from 10,000/- to 15,000/- he had filed a complaint before the Registrar which is still pending, I do not think that in so far as the complaint of the petitioner still

remains as complaint without any orders thereon, I can take note of such a contention to decide this case.

9. I have considered the rival contentions in detail. Since I am particularly impressed with the contention of the petitioner that the report relied upon by the 1st respondent for issue of Ext.P1 notice under Section 32 is not one validly obtained complying with the provisions of Rule 66, I shall first deal with that question. Sub rules 1 and 2 of Rule 66 read thus:

> "66. **Procedure for the conduct of inquiry and inspection**:- (1)(i) An order, authorising inquiry under Section 65 or inspection under Section 66 shall among other things, contain the following:
>
> (a) the name of the society whose affairs are to be inquired into or whose books of accounts are to be inspected:
>
> (b) the name of the person authorised to conduct the inquiry or inspection;
>
> © in specific point or points on which the inquiry or inspection is to be made, the period within which the inquiry or inspection is to be completed and report submitted to the Registrar;
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> (d) costs of inquiry or inspection;
>
> (e) any other matter relating or pertaining to the inquiry or inspection.
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> (2) A copy of every order authorising inquiry under Section 65 or inspection under section 66 shall be issued to the President or the Secretary of the Society concerned by registered post with acknowledgment due. A copy of the order shall also be made available to the Central Society or societies, to which the society in respect

of which the order is issued, is affiliated."

10. The fact that Rule 66 stipulates that an order authorizing inspection under Section 66 shall contain the 5 details mentioned therein would go to show that the same is not an empty formality. This is with the purpose to enable the managing committee of the Society to be put on notice regarding the matters in respect of which they have to provide the authorised officer information during the inspection. So also, the very wording, of Sub rule 2 would make it abundantly clear that the procedure of sending copy of the order authorizing the enquiry under Section 66 to the President or the Secretary of the Society is mandatory in nature. It specifically states that, that order shall be issued to the President or the Secretary of the Society concerned by registered post with acknowledgment due. It is settled law that when a statute prescribes that a particular thing should be done in particular manner, it should be done in that manner only and in no other manner. **[**See **Thodupuzha Taluk Co-op. Marketing Society Vs. Joint Registrar of Co-op. Societies (2002 (1) KLT 638)]** When Sub rule 2 of Rule 66 prescribes the mode of issuing copy of the order authorizing inspection under Section 66 by registered post acknowledgment due, unless the order is so issued by registered post acknowledgment due, it cannot be held that even if the order is issued in some other manner, the same would be in due compliance

with the provisions of Rule 66. The mandatory nature of the provisions of Rule 66 has been considered by Sri. J.B. Koshy,J in the decision in **Elakkal Service Co-operative Bank's case.** In paragraph 8 of the said decision, the learned Judge had held as follows:

> "First question is whether the procedure prescribed under R.66 are mandatory or mere directory. Sub-r 91) of R.66 says that an order authorizing inquiry under S.65 shall among other things contain the following. The word used is 'shall'. Therefore, it is contended by the petitioners that question of prejudice or non-prejudice cannot be looked into because the word 'shall' used indicates that there are mandatory procedural rules. The name of the inquiry officer should be intimated is a mandatory requirement of the statute. Whether any prejudice at all was caused is entirely a different matter. Joint Registrar who is a creature of the statute cannot say that such a rule is unnecessary as informing the name of the person who is authorised to conduct the inquiry makes no different and no prejudice will be caused. There is clear violation of sub-r (1) (b) of R.66. It is specifically mentioned in R.66(1) (b) that the name of the person authorised to conduct the inquiry shall be informed. According to me, this is a mandatory provision. Whether that provision is unnecessary or whether that provision should have been deleted or not, is a question before me. So long as that rule stands, Joint Registrar should have complied with the same. For any reason if Joint Registrar was unable to inform the name question of substantial compliance could have been considered. But, in no

> such circumstances, Joint Registrar can say that such a rule is not necessary as no purpose will be served by mentioning the name. Admittedly, R.66(1)(d) was not complied with. But, with regard to the contention that the notice was not served by registered post acknowledgment due as provided under R.66(2). It is true that there is non-compliance of the above rule which is mandatory. Notice was sent by ordinary post only. S.104 of the Act also provides that such notice shall be served by registered post. I cannot understand why notice in this case was not served by Joint Registrar as provided under S.104 or R.66(2). However, since the petitioner accepted notice and replied the same on merits, on that ground alone enquiry cannot be set aside as no prejudice is caused by non-observance of the above procedure.

11. I am in full agreement with the view expressed by the learned Judge as above. I also hold that the provisions of Rule 66 particularly, Sub rule 2 is mandatory in nature.

12. The learned Government pleader appearing for the 1st respondent would point out that in paragraph 3 of the counter affidavit filed on behalf of the 1st respondent. It has been stated thus:

> "3. As to the averments in paragraph 3 of the writ petition that, procedure contemplated in Rule 66 was not complied with for conducting an enquiry under Section 66, it is submitted that the 2nd respondent has authorised the Adimaly Unit Inspector to conduct an enquiry vide proceedings No.G.496/06 dated 28.8.2006. In compliance of Rule 66 of the K.C.S. Rules,

> petitioner Society was informed about the enquiry. The enquiry was conducted on 28.8.2006 and 29.8.2006 in the petitioner society, and the report was filed. No procedural irregularities occurred in this regard. The findings were not a figment of imagination of this respondent as raised by the petitioner. On the basis of Sec.66 enquiry report only Ext.P1 notice is issued."

She submits that since in compliance with Rule 66 the petitioner Society was informed about the enquiry, there is substantial compliance of the provisions of Sub rule 2 of Rule 66. Not only am I not convinced about compliance of Rule 66 by the 1st respondent, I am also far from being convinced that any intimation has been issued at all to the President or the Secretary of the Society. The sentence "in compliance of Rule 66 of Kerala Co-operative Service Rules, petitioner-Society was informed about the enquiry" in paragraph 3 of the counter affidavit is as vague as vague can be. The 1st respondent does not say how the Society was informed about the enquiry, he does not say when the Society was informed about the enquiry, he does not say to whom that information was conveyed; and does not say by what communication the Society was informed about the enquiry. As such by the counter affidavit itself the 1st respondent has amply proved that the provisions of Rule 66 has been blatantly violated by the 1st respondent while ordering an inspection under Section 66. If at all there is such an order, I am constrained to say that in spite of filing a counter

affidavit, the 1st respondent has not found it necessary to support the same with copies of documents in support of the contentions therein, like the order authorizing enquiry under Section 66, the copy of the letter issued to the President or Secretary forwarding copy of the order authorizing enquiry under Section 66, receipt evidencing service of the order on the Society, or any other communication what so ever in this regard.

13. The learned Government pleader would submit that for a valid initiation of proceedings under Section 32 it is not necessary that there should be a Section 66 report at all and what is necessary to invoke the jurisdiction of the Registrar under Section 32 is only the satisfaction of the registrar after an enquiry by himself or through his subordinates or on a report of the financing bank or the Vigilance and Anti-Corruption Bureau of the Government or the Vigilance Officer or otherwise that the committee of the Society has committed any of the four irregularities mentioned in Section 32. According to her, Ext.P1 would prima facie discloses such a satisfaction by the Registrar and therefore evenif it is assumed that the report under Section 66 has not been validly obtained that would not in any way initiate Ext.P1 notice.

14. I have no doubt that for initiating proceedings under Section 32, the decision of the registrar as contemplated under Section 32 need not necessarily be on the basis of a report under

Section 66. Certainly a reading of Section 32 would show that other materials mentioned in Section 32 would also can be the basis of the satisfaction contemplated under Section 32. But since in Ext.P1 notice, the 1st respondent himself, categorically states that his satisfaction about the irregularities mentioned in Ext.P1 is based on a report under Section 66 itself. That being so, unless the 1st respondent satisfies me that the report under Section 66 has been obtained validly and in compliance with the procedure prescribed under Rule 66, I would have no hesitation to hold that the Ext.P1 notice has not been issued validly. As I have held earlier, the learned Government pleader was not able to satisfy me that Section 66 report has been obtained after complying with the mandatory requirements of Rule 66.

15. In this connection it is worthwhile to extract a passage from the decision of a Single judge of this Court in **Sudarsanan's Case** supra, paragraph 13 of which reads thus:

> "13. Coming to the facts of the case, the impugned order Ext.P8 sets out the main irregularities and states that on the basis of the reports submitted under S.66 of the Act, the Registrar is convinced that action under S. 32 should be taken to remove the committee. The Joint Registrar did not independently consider the explanation furnished by the petitioners. Nowherein the order, it is seen, that the Joint Registrar has discussed the alleged irregularities in reference to the explanation furnished by the petitioner. On the contrary, the Joint Registrar was proceeding on the basis that he intends to confirm the recommendations of the Assistant Registrar.

> This, in my view, is a clear abdication of the power conferred under S.32 of the Act. Besides the Joint Registrar has failed to come to his independent satisfaction on the alleged irregularities. The Joint Registrar had failed to see that he was not sitting in appeal or for considering whether the decision taken by the Assistant Registrar in superseding the society is to be confirmed or not. The Joint Registrar should have independently considered the charges levelled in the show cause notice and the reply furnished by the petitioners. In **Jose Kuttiyani Vs. Registrar of Co-operative Societies (AIR 1982 Ker. 12)** a Division Bench of this Court held that Registrar does not appear to have weighed the facts independently. The Division Bench further held that the Registrar must be satisfied that the conditions precedent for the exercise of the power of supersession are in existence or not. No doubt the satisfaction may be subjective, but it shall not be arbitrary. If the contention is that the Registrar never applied his mind and therefore, he could not have been satisfied, the court can enter into that question, the ingredient of satisfaction being the condition precedent to the exercise of power. In the decision of the Supreme Court in **Joint Registrar of Co-operative Societies, Madras and Ors. Vs. P.S. Rajagopal Naidu and Ors. (AIR 1970 SC 992)** referred above, the Supreme Court held that even though the opinion of the Registrar is purely a subjective process, there must be cogent material on which the Registrar has to form his opinion that the society was not functioning properly in order to sustain the subsequent supersession of the committee after considering its representation on that ground. The requisite opinion has indisputably to be formed honestly and after applying his mind by the Registrar to the relevant materials before him the only condition precedent for taking action is that the Registrar must consult the financing bank.”.

It must be noted here that this decision itself is based on an earlier Division Bench decision. In this case except quoting the Assistant

Registrar's report under Section 66, which itself has not been obtained validly there is nothing to show that before issuing Ext.P1, the Joint Registrar has not even applied his mind to the same, which is obvious from Ext.P1.

16. Coming to the contention of the learned Government pleader, regarding the maintainability of the writ petition, on the ground that a show cause notice cannot be the subject matter of a challenge in a writ petition under Article 226 of the Constitution of India, I am inclined to hold that the petitioner has made out sufficient grounds for interference at the stage of notice itself because of the conduct of the 1st respondent himself. When it has been pointed out to me and I have been convinced about the fact that the issuance of Ext.P1 itself is without the required satisfaction of the 1st respondent as provided under Section 32, I am inclined to hold that the very initiation of the proceedings itself is bad and violation of the Kerala Co-operative societies Act and Rules thereunder. This is all the more so since the power of supersession should be invoked only in exceptional and rare cases. The rule that a show cause notice cannot be subject to a challenge under Article 226 of the Constitution of India is not an absolute rule without any exceptions. This Court can certainly exercise its discretionary jurisdiction in appropriate cases where this Court is satisfied that while issuing a show cause notice a violation of law has been

perpetrated by statutory authority in violation of the mandatory provisions of the rules. The hands of this Court cannot be held to be tied down on the ground that what is challenged is only a show cause notice in such cases.

17. The petitioner also contends that the four irregularities mentioned in Section 32(1) is not present in the case of the Society. Going by the irregularities mentioned in Ext.P1 notice, although I am prima facie impressed with the contention of the petitioner in this regard, I am not going in detail into that question since I am satisfied that Ext.P1 is liable to be quashed on the other ground itself. The result of the above discussion is that Ext.P1 notice issued to the managing committee of the Society headed by the petitioner is patently illegal and unsustainable and is liable to be quashed. I do so.

The writ petition is allowed as above.

S. SIRI JAGAN, JUDGE

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